

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

DON JAY BLUNT,  
Plaintiff  
vs.  
UNITED STATES OF AMERICA,  
Defendant.

2:12-cv-2191-RCJ-NJK

**ORDER**

UNITED STATES OF AMERICA,  
Counterclaim Plaintiff  
vs.  
DON JAY BLUNT,  
Counterclaim Defendant,  
and  
JENNIFER PELLIGRINO (formerly  
JENNIFER OLIVAS)  
Counterclaim Defendant.

Before the Court is the United States of America's Unopposed Motion for Leave to Amend Counterclaim (#25).

**BACKGROUND**

On December 24, 2012, Plaintiff Don Jay Blunt filed a Complaint seeking a refund of federal income taxes and disputing the Internal Revenue Service's assessments made against Blunt under 26 U.S.C. § 6672. Docket No. 1. On March 1, 2013, the United States filed its Answer and Counterclaim against Blunt. Docket No. 8. On March 22, 2013 the United States filed its Amended Answer and Counterclaims against Blunt and against Jennifer Olivas. Docket No. 11. The Amended Answer and Counterclaims against Blunt and against Olivas incorrectly

1 identified Olivas' last name.

2 On April 2, 2013, Ms. Olivas filed a voluntary petition under Chapter 7 of the Bankruptcy  
 3 Code (11 U.S.C) in the United States Bankruptcy Court of District of Nevada, case No.  
 4 13-12765-bam. Counsel for the United States learned that Olivas' current last name is Olivas,  
 5 and she was formerly known as Pellegrino, and that the Amended Answer and Counterclaim  
 6 incorrectly identified her as "Pelligrino (formerly Olivas)."

7 The Second Amended Answer and Counterclaim differs from the Amended Answer and  
 8 Counterclaim only in that it corrects Olivas' last name.

### 9 DISCUSSION

10 "Leave to amend shall be freely given when justice so requires." Miller v. Rykoff-  
 11 Sexton, Inc., 845 F.2d 209, 214 (9<sup>th</sup> Cir. 1988), citing Fed. R. Civ. P. 15(a). "Several factors  
 12 govern the propriety of a motion under rule 15: (1) undue delay, (2) bad faith, (3) futility of  
 13 amendment, and (4) prejudice to the opponent." Loehr v. Ventura County Community College  
 14 Dist., 743 F.2d 1310, 1319 (9<sup>th</sup> Cir. 1984), citing Hurn v. Retirement Fund Trust of Plumbing,  
 15 Heating & Piping Indus. S. Cal., 648 F.2d at 1254 (9<sup>th</sup> Cir. 1981).

16 Here, the sole purpose of the unopposed Second Amended Answer is to correct Olivas'  
 17 last name. This correction will not cause undue delay, it is not futile, and it will not prejudice the  
 18 opposition. Additionally, there is no evidence of bad faith. Accordingly, the Court grants leave to  
 19 amend the counterclaim.

### 20 CONCLUSION

21 Based on the foregoing, and good cause appearing therefore,

22 IT IS HEREBY ORDERED that the United States of America's Unopposed Motion for  
 23 Leave to Amend Counterclaim (#25) is GRANTED.

24 DATED this 1st day of August, 2013

25  
 26  
 27 NANCY J. KOPPE  
 28 United States Magistrate Judge